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Supreme Court, U.S.
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No. 02-324

In the Supreme Court of the United States

ROBERT M. COY, JR.,
Petitioner,

v.

GLENN W. PHELPS, JR.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY BRIEF

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REPLY OF PETITIONER

A. Respondent's Brief Fails to Address the Question Presented.

The Petition for Writ presents the following simple question:

> Whether a claim of excessive force made by a pretrial detainee for actions that occurred after the detainee has been arrested and transported to the police station is properly governed by the Fourth Amendment prohibition against unreasonable seizures or the Fourteenth Amendment guarantee of due process of law.

Respondent concedes there is a conflict among the circuits with respect to the question presented. Respondent's only argument against granting the writ is that the "fact pattern" of this case would not permit a decision by this Court which will properly guide the judiciary in future cases. That argument demonstrates a misunderstanding of the facts which are material to the resolution of the question presented in the Petition.

This case presents a clear fact pattern for resolving the conflict among the circuits with respect to the constitutional question presented, namely, the constitutional source of excessive force claims of pre-trial detainees. The key items of the fact pattern are that Plaintiff was arrested; Plaintiff was transported to the police station; and at the police station a degree of force was used by Defendant police officer upon which Plaintiff bases a claim of excessive force. Respondent argues that the fact pattern herein is not sufficiently clear to warrant granting the writ on the grounds that the Plaintiff was

mentally deficient and there is a "question as to why Mr. Phelps was ever seized to begin with and what these officers planned to do with him at the police station." Notwithstanding that contention by Respondent, the Complaint did not raise any constitutional issue based on the circumstances surrounding the arrest or the fact that Respondent was transported to the police station. This case is appropriate for the Court to decide the constitutional source of the standard to be used for a claim of excessive force of a pretrial detainee occurring after the arrest while in custody at the police station because the facts material to that unresolved issue are clearly presented in the context of this lawsuit: to wit, Respondent's excessive force claim arises from alleged excessive force occurring at the police station by an arresting officer.

In Graham v. Connor, 490 U.S. 386 (1989), this Court said that consideration of an excessive force claim first requires the identification of the specific constitutional right alleged to have been violated. The reason for the necessity of such identification is that the validity of the claim will be judged by reference to the specific constitutional standard governing that constitutional right. A substantially higher hurdle must be surpassed to make a showing of excessive force under the Fourteenth Amendment than under the objective reasonableness test of the Fourth Amendment. Darrah v. City of Oak Park, 255 F. 3d 301, 306 (6th Circuit 2001). The facts of this case give the Court an opportunity to resolve this constitutional dilemma.

B. Granting the Writ is Essential for "Clearly Established Law."

Many cases in which a claim of excessive force is made involve the assertion of a qualified immunity defense.

It is vital that the applicable constitutional standard be known in such cases since the trial court will not only be required to determine whether a right was violated but whether that right was clearly established as required by Saucier v. Katz, 533 U.S. 194 (2001). It is critical for the Court to decide the source of the constitutional right, and the resulting standard, in order that a body of "clearly established law" can be said to exist. Clearly established law on this issue is important so that police officers can determine the standards they are required to follow, and in order that private citizens are aware of their rights and whether there has been a violation thereof. Respondent's argument raises issues which are immaterial to the question presented and fail to recognize the importance of having clearly established law. As a result of the division among the circuits, and the admission by the Sixth Circuit in Gantt v. Akron Corrections Facility, 73 F. 3d 361,362 (6th Cir. 1996) of the "murky area" between the Fourth and the Fourteenth Amendment, it is difficult to argue that either the Plaintiff or Defendant Coy could have been aware of clearly established law in this case. There is nothing present in the fact pattern of this case which would be an impediment to the Court's ability to provide the clearly established law on the question presented for the benefit of the police, citizens and the courts.

C. The Severity of the Charge is Not Material.

Additionally, Respondent seems to argue that a better case for addressing the question presented would be one in which the Plaintiff had been arrested on more serious charges. Respondent offers no support for such position. The logical conclusion from Respondent's argument is that the severity of the offense for which an individual is arrested could have some bearing on whether the amount of force used subsequent to the arrest, after the individual had been transferred to the

police station as a pretrial detainee, is excessive. Petitioner is unaware of any support in the case law for such position. Petitioner submits that the clear fact pattern herein allows the Court to decide the question presented definitively which will provide guidance to the judiciary in excessive force cases regardless of whether the Plaintiff is mentally deficient or not and regardless of whether the arrest is for a misdemeanor or a felony.

Petitioner respectfully submits that Respondent's arguments against granting the writ to resolve this important conflict among the circuits would leave the state of the law in the "murky area" between the Fourth and Fourteenth Amendments described in Gantt, supra. The clear facts of this case present an appropriate opportunity for this Court clear up this "murky area"and resolve the conflict among the circuits.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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